

JAN 18 1922

SAMUEL D. BAKER

# United States Supreme Court

October Term, 1921

No. 317

GIOVANNI LUZZATO and JOSEPH G. LUZZATO, Copartners,  
doing under the firm name of GIOVANNI LUZZATO & SON,  
*Appellants*

*against*

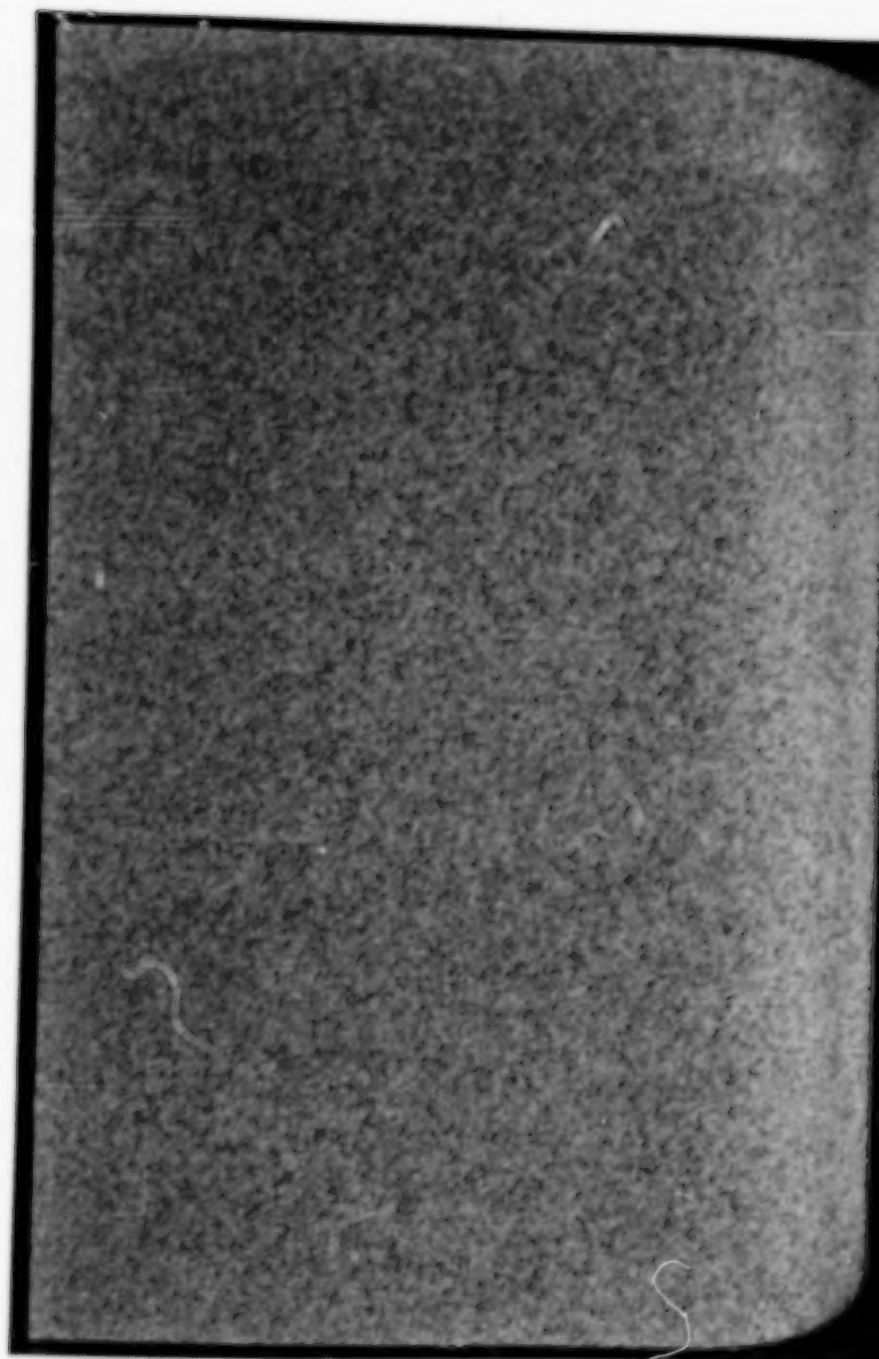
STEAMSHIP PESARO,

*Appellee*

MOTION BY THE APPELLEE TO DISMISS  
OR AFFIRM.

JAMES H. WOOLLEY,

Attorney for the STEAMSHIP PESARO, appearing  
counsel for the purpose of stating  
objection and was by leave of court



UNITED STATES SUPREME COURT.

GIOVANNI LUZZATO and JOSEPH G.  
LUZZATO, Copartners, Trading  
Under the Firm Name of GIO-  
VANNI LUZZATO & SON,

Appellants,

*against*

The Steamship PESARO.

October Term,

1920.

No. 317.

Notice of Motion.

SIRS:

PLEASE TAKE NOTICE that the annexed motion to dis-  
miss or affirm will be presented to the Supreme Court of  
the United States when the above case is called for ar-  
gument.

Dated, New York, December 24th, 1920.

Yours, etc.,

JOHN M. WOOLSEY,

Counsel appearing specially for the  
steamship PESARO for the purpose  
of claiming immunity and for no  
other purpose.

To:

D. ROGER ENGLAR, Esq.,

OSCAR R. HOUSTON, Esq.,

Counsel for Appellants.

## UNITED STATES SUPREME COURT.

GIOVANNI LUZZATO and JOSEPH G.  
LUZZATO, Copartners, Trading  
Under the Firm Name of GIO-  
VANNI LUZZATO & SON,  
Appellants,

*against*

Steamship PESARO.

October Term,  
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NOW COMES the appellee by its counsel, appearing specially for the Italian Ambassador to the United States for the purpose of claiming immunity for the steamship PESARO and for no other purpose, and on the record herein moves—

I. That this Court dismiss the appeal herein on the ground that this Court is without jurisdiction of this appeal because,

A. The appeal was improperly taken from the District Court direct to this Court under Section 238 of the Act entitled, "An Act to Modify, Revise and Amend the Laws Relating to the Judiciary", commonly cited as "The Judicial Code", approved March 3rd, 1911, Chapter 231\*, and

\*The relevant portion of Section 238 of the Judicial Code is as follows:  
"Appeals and writs of error may be taken from the district courts, including the United States District Court for Hawaii and the United States District Court for Porto Rico, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; \* \* \*"

B. The certificate as to question of jurisdiction (Record, pages 17-18) made by Honorable John C. Knox, the District Judge who allowed the appeal, was erroneous for the reason that a question of immunity is not a question of jurisdiction within the meaning of the said Act;

And in the alternative,

II. That the Court should affirm the order below on the ground that the decision of the District Court releasing the PESARO from arrest and declaring her immune was correct, or

III. That the Court should grant the appellee such other or further relief as may be just in the premises.

Dated, New York, December 24, 1920.

JOHN M. WOOLSEY,  
Counsel appearing specially for the  
steamship PESARO for the purpose  
of claiming immunity and for no  
other purpose.